MEMO

TO: **Council Position Voting District Committee**

FROM: **Steve Smith**

DATE: **September 21, 2015**

RE: ***Rogelio Montes, et. al. v. City of Yakima, et. al.***

This memorandum summarizes United States District Court for the Eastern District of Washington Case No. 12-CV-3108-TOR, *Rogelio Montes, et al., v. City of Yakima, et al.* (2014). This memorandum is divided into two main parts, (A) Order on Cross-Motions for Summary Judgment and (B) Final Injunction and Remedial Districting Plan.

A. *Order on Cross-Motions for Summary Judgment*

1. Background

a. Lawsuit

Plaintiffs, Rogelio Montes et. al. alleged against the City of Yakima ("City") an action to remedy a violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 (previously codified at 42 U.S.C. § 1973), alleging that the at-large electoral system in the City deprived Latinos of the right to elect representatives of their choosing to the City Council.

b. Yakima Electorate Process – Primary and General

City uses an at-large election system to fill seven seats on the City Council. *Montes* at 3. Four of these seats, designated Positions 1, 2, 3 and 4, have residency restrictions. *Id.* Candidates who run for one of these four seats must reside in a geographic district which corresponds to their seat number. *Id.* The remaining three seats, designated Positions 5, 6 and 7,

have no residency restriction. *Id.* Candidates who run for one of these three seats may reside anywhere in the City. *Id.* Each seat has a four-year term. *Id.* Terms are staggered, with elections to fill seats with expiring terms held every two years. *Id.*

The elections adhere to a "numbered post" format, wherein candidates file for a particular seat and compete only against other candidates who run for that same seat. *Id.* If more than two candidates file for a particular seat, the City conducts a primary election to narrow the field to two candidates. *Id.* In the primary, if the seat is one of the four residency-restricted seats, only voters who reside in the district which corresponds to that seat may vote in the primary. *Id.* If the seat is unrestricted, all voters residing within the City may vote. *Id.* In the primary, the two candidates who receive the highest number of votes advance to a general election. *Id.*

In the general election, two candidates run head-to-head for each seat. *Id.* at 4. The candidate who obtains the most votes wins. *Id.* In the general election, all registered voters may cast one vote in each head-to-head race, without regard to whether the seat is residency-restricted. *Id.* To prevail, a candidate must obtain a simple majority of votes in his or her head-to-head race. *Id.*

2. Section 2 of the Voting Rights Act (now 52 U.S.C. § 10301)

Section 2 of the Voting Rights Act of 1965 (now codified at 52 U.S.C. § 10301) precludes states from using voting practices which result in "a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a) (now codified at 52 U.S.C. § 10301). This legislation protects the Fifteenth Amendment guarantee that "no citizen's vote shall 'be denied or abridged . . . on account of race, color, or previous condition of servitude." *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (quoting U.S. Const. amend. XV, § 1). A § 2 violation occurs when, based upon the totality of the

circumstances, the challenged electoral process is "not equally open to participation by members of a [racial minority group] in that its members have less opportunity than other members of the electorate to *participate in the political process and to elect representatives of their choice*." 42 U.S.C. § 1973(b) (emphasis added). The essence of a § 2 claim is that a certain electoral law interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority and majority voters to elect their preferred representatives. *Thornburg v. Gingles,* 478 U.S. 30, 47 (1986). § 2 confers not a right to proportional representation, but a right to participate equally in the political process. *See* 42 U.S.C. § 1973(b).

a. *Gingles factors*

Thornburg v. Gingles, a United States Supreme Court opinion, is the primary case applying § 2. The *Gingles* court identified three "necessary preconditions" which a plaintiff must satisfy to proceed with a vote dilution claim:

> First, the plaintiff must demonstrate that his or her minority group is "sufficiently large and geographically compact to constitue a majority in a single-member [voting] district."
>
> Second, he or she must establish that the minority group is "politically cohesive."
>
> Third, the plaintiff must demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.

Gingles, 478 U.S. at 50-51.

In essence, a § 2 plaintiff must make a prima facie showing that "a bloc voting majority [will] *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Id.* at 49. The plaintiff need not demonstrate a design to discriminate or intentional racial bloc voting, only that the system has "the *effect* of denying [the minority] the equal opportunity to elect its candidate of choice." *Voinovich*, 507 U.S. at 155.

b. ***Totality of the Circumstances – Senate Factors***

If a plaintiff satisfies the *Gingles* preconditions, he or she must then prove that, under the totality of the circumstances, minority voters have less opportunity than members of the majority group to participate in the political process and to elect representatives of their choice. 42 U.S.C. § 1973(b). The *Gingles* court identified seven factors relevant to this determination, called the "Senate Factors," which are as follows:

> (1) The history of voting-related discrimination in the jurisdiction;
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> (2) The extent to which voting in the elections of the jurisdiction is racially polarized;
>
> (3) The extent to which the jurisdiction has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority groups, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
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> (4) The exclusion of members of the minority group from candidate slating processes;
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> (5) The extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
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> (6) The use of overt or subtle racial appeals in political campaigns; and
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> (7) The extent to which members of the minority group have been elected to public office in the jurisdiction.

Gingles, 478 U.S. at 44-45.

When it is relevant to a particular claim, a court in addition may consider the extent to which elected officials have been responsive to the particularized needs of the minority group, and the policy underlying the challenged voting practice or procedures. *Id.* at 45.

These factors are not exclusive and others which are relevant may be considered. *Id.* The ultimate inquiry is whether, under the totality of the circumstances, the challenged electoral

process "is equally open to minority voters." *Id.* at 79. A court is required to look only at the discriminatory *result*, not intent to discriminate. *Voinovich*, 507 U.S. at 155.

c. ***Application to City of Gingles Preconditions***

i. ***First Gingles Precondition***

The question asked under the first *Gingles* precondition is whether there are enough minority voters, and are they sufficiently large and geographically compact to form a majority of voters in a single-member district. *Gingles*, 478 U.S. at 50. If the answer is yes, the first *Gingles* precondition is met; if not, the claim fails. *Montes* at 13. The plaintiff is required to draw a hypothetical district which satisfies these requirements using real demographic information. *Id.*

The hypothetical "minority" district serves to link the alleged injury (minority's inability to elect representatives of its choosing) to the alleged cause (challenged voting system). *Id.* In addition, a hypothetical district in which minority voters represent more than 50% of all eligible voters demonstrates an effective remedy can be established. *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997). In essence, if no workable minority district can be drawn, "there has neither been a wrong nor can there be a remedy." *Growe v. Emison*, 507 U.S. 25, 41 (1993).

I. ***Sub-Criteria – Numerosity & Compactness***

Courts which address vote dilution claims under § 2 divide the first precondition into two sub-criteria: numerosity and compactness. *Montes* at 15. Numerosity is satisfied when minority voters form "a numerical, working majority of the voting-age population" in the proposed district. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009); *see also id.* at 19-20 ("A party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent).

Compactness, the second criterion, refers to the geographical dispersion of minority voters within the jurisdiction. *League of United Latin Am. Citizens v. Perry (LULAC)*, 548 U.S. 399, 433 (2006). Compactness measures whether minority voters are sufficiently concentrated geographically to facilitate the creation of a single voting district in which minority voters outnumber majority voters. *Gingles*, 478 U.S. at 50 & n.17. This compactness inquiry under § 2 focuses more generally on whether the proposed minority district reasonably comports with traditional districting principles such as contiguousness, population equality, maintaining communities of interest, respecting traditional boundaries and providing protection to incumbents. *LULAC*, 548 U.S. at 433.

II. ***Application of Numerosity***

The court in *Montes* concluded that the Plaintiffs established that a district can be drawn in which the Latino citizen voting age population ("LCVAP") comprises more than 50% of the district's total eligible voters. *Montes* at 17. The Plaintiff's expert, Mr. William Cooper used the most recent data from the U.S. Census Bureau's *American Community Survey* ("ACS"). *Id.* Mr. Cooper generated five separate plans which broke the City into seven (7) individual voting districts. *Id.* Two of the plans used Mr. Cooper's preferred statistical methodology ("Method 1"). The other three plans used the Defendants' favored statistical methodology ("Method 2"). *Id.*

Applying the statistical methods to the City, there were at least five possible single-member voting districts which satisfied the numerosity requirement. *Montes* at 18. The court therefore found no genuine issue of material fact as to numerosity. *Id.*

III. ***Application of Compactness***

The court found that Plaintiffs also demonstrated that the LCVAP was sufficiently "compact" for the creation of a reasonably compact minority district. *Id.* at 20. Census data from 2010 revealed that nearly three-fourths (72.54%) of the City's Latino population resided in an area of the City east of 16th Avenue. *Id.* All 2010 Census block groups with a LCVAP of 40% or higher were located east of 16th Avenue. *Id.* Using a statistical measure known as the Reock test, "Mr. Cooper determined that the districts in each of his five proposed plans were (1) more compact on average than the districts in the existing [City] 2011 Plan; (2) more compact than one-quarter of the districts in the Washington State Legislature Plan; and (3) comparably compact to the plans utilized in Pasco, Spokane and Tacoma. *Id.* at 22-23.

The *Montes* court concluded that Plaintiffs satisfied the compactness component of the first *Gingles* precondition. The court explained that "if the plaintiff proves by a preponderance of the evidence that a workable remedy can be fashioned, the first *Gingles* precondition is satisfied." *Id.* at 28. The *Montes* court found that there were no genuine issues of material fact for trial as to this precondition. *Id.*

The *Montes* court noted that "to whatever extent the proposal requires fine-tuning—including potential adjustments to achieve a higher degree of electoral equality between districts—these minor adjustments can be left to the remedial stage of the litigation." *Id.* at 29. In addition, the fact that the proposed remedy does not benefit all of the Hispanics in the City does not justify denying any remedy at all. *See Gomez v. City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988).

ii. ***Second Gingles Precondition***

The second *Gingles* precondition focuses on whether the minority group is "politically cohesive." *Gingles*, 478 U.S. at 51. The relevant inquiry is "whether the minority group has expressed clear political preferences that are distinct from those of the majority." *Gomez*, 863 F.2d at 1415. To satisfy this requirement, the plaintiff must demonstrate that "a significant number of minority group members usually vote for the same candidates." *Gingles*, 478 U.S. at 56. This political cohesiveness must be proven with statistical evidence of historical voting patterns. *See Gomez*, 863 F.2d at 1415. Election results from within the challenged voting system are most probative, although results from "exogeneous" elections may also be considered. *United States v. Blaine Cnty*., 363 F.3d 897, 912 (9th Cir. 2004).

Plaintiffs "proffered statistical analyses performed by their voting expert, Dr. Richard Engstrom, of the voting patters of both Latinos and non-Latinos in ten recent contests (nine elections and one ballot measure)." *Montes* at 34. All contests "featured a Latino candidate, or, in the case of the ballot measure, an issue of presumed importance to Latinos." *Id.* at 35.

Dr. Engstrom used a statistical analysis known as ecological inference ("EI") to analyze which candidates (Latino and non-Latino) were favored by which voting groups (Latinos and non-Latinos) in each of the ten contests. *Id.* This analysis showed a clear picture of Latino voter cohesion. *Id.* The results were plainly indicative of "a significant number of Latino voters usually voting for the same candidates. *Gingles*, 478 U.S. at 56. In each contest, the Latino candidate or issue "won more than 50% of the votes cast by Latino voters." *Montes* at 39.

Even applying confidence intervals, the *Montes* court found it could be confident, to a 95% degree of certainty, that the Latino candidate received *at least* three-quarters of the votes cast by Latino voters when the City Council seat was on the line in the general election. *Id.* at

41. The court also noted that the Ninth Circuit has prohibited district courts from discounting statistics about a minority group's candidate preferences on the basis of low voter turnout. *See Gomez*, 863 F.2d at 1416. The *Montes* court found for summary judgment in favor of the Plaintiffs as to this issue.

iii. ***Third Gingles Precondition***

The third *Gingles* precondition focuses on whether the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Gingles*, 478 U.S. at 51. In general, a majority bloc vote that "normally will defeat the combined strength of minority support plus majority crossover votes rises to the level of legally significant majority bloc voting." *Id.* at 56.

The *Montes* court noted at the outset that no Latino candidate had ever been elected to the City Council in the history of the current at-large voting system. *Montes* at 43. The *Montes* court saw this as powerful evidence that the non-Latino majority will usually defeat the Latino minority's preferred candidate. *Id.* Given the roughly one-third Latino population in the City, the court noted that one would certainly expect this group to have had some success in electing a candidate of its choosing. *Id.* at 43-44.

The *Montes* court cited to *Growe*, "the minority political cohesion and majority bloc voting showings [work together] to establish that the challenged districting thwarts a distinctive minority vote by submerging it in a larger [majority] voting population." 507 U.S. at 40. The court held that there is only one rational conclusion to be drawn from the undisputed evidence: "that the non-Latino majority in Yakima routinely suffocates the voting preferences of the Latino minority." *Montes* at 48.

d. ***Application of Senate Factors***

The *Montes* court explained that the *Gingles* framework is merely a screening tool designed "to help courts determine which claims could meet the totality-of-the-circumstances standard for a § 2 violation." *Bartlett*, 556 U.S. at 21. Satisfaction of the three *Gingles* preconditions does not result in a finding of liability. *Id.* To establish liability, the plaintiff must ultimately show that, under the "totality of the circumstances," members of a minority group have less opportunity than the majority to participate in the political process and to elect representatives of their choosing." 42 U.S.C. § 1973(b) (now codified at 52 U.S.C. § 10301).

In analyzing whether the totality of the circumstances test has been satisfied, courts look to the non-exhaustive "Senate Factors" identified in *Gingles*. *Gingles*, 478 U.S. at 44-45. These factors are set forth above on page 4 of this memorandum. The process by which City Council members are elected is set forth on pages 1-2 of this memorandum.

i. ***History of Voting-Related Discrimination***

Plaintiffs proffered two instances of past discrimination against Latinos. *Montes* at 52. The *Montes* court found relevant the second instance, wherein Yakima County was sued by the U.S. Department of Justice in 2004 for failing to provide Spanish-language voting materials and voter assistance as required by Section 203 of the Voting Rights Act. *Montes* at 52-53.

ii. ***Extent of Racially Polarized Voting***

The second Senate Factor is "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 37. The concept of "racially polarized voting" encompasses the second and third *Gingles* preconditions—whether the minority group votes cohesively and whether the majority votes sufficiently as a bloc to usually defeat the minority's preferred candidate. *Gingles*, 478 U.S. at 56. This factor, along with the

seventh factor (extent of minority electoral success) are "the most important Senate factors" when the challenged electoral process allows all voters within the jurisdiction to cast a vote for any candidate running for any open position. *Blaine Cnty.*, 363 F.3d at 903.

The *Montes* court found that there can be no serious dispute that voting in Yakima is racially polarized, in nine of out ten contests analyzed, the Latino candidate received more than 50% of the votes cast by Latino voters. *Montes* at 54. The court noted that despite the strong Latino support, the Latino candidate was defeated in every single race as a result of bloc voting by the non-Latino majority. *Id.*

iii. *Presence of Suspect Voting Practices or Procedures*

The third Senate Factor looks to "the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group." *Gingles*, 478 U.S. at 37. Plaintiffs proffered four, and the court found persuasive two features of the City's electoral system which render the Latino minority's vote particularly susceptible to dilution: (1) the numbered post system and (2) the effective majority vote requirement. *Montes* at 55-56.

As many courts have recognized, a numbered post system "enhances [the minority group's] lack of access because it prevents a cohesive political group from concentrating on a single candidate." *Rogers v. Lodge*, 458 U.S. 613, 627 (1982). The *Montes* court found that a numbered post system blunts the effectiveness of voting cohesively for one candidate because it forces the minority's chosen candidate to compete against fewer candidates than if the election were purely at-large. *Montes* at 57. "This results in the majority's votes being distributed among few total candidates, which has the effect of making it more difficult for the minority candidate

to separate himself or herself from the pack." *Id.* The court found, "under a best-case scenario—which assumes that all eligible Latinos are registered to vote, that they all turn out to vote in the election, and that they all vote for the same candidate—a Latino-preferred candidate would need at least one-third (33.3%) of the non-Latino majority's votes to win a City Council seat." *Id.* at 58-59. The court explained that the Latino voters are inherently disadvantaged by the framework of the current system. *Id.* at 60. It held that the City's electoral system is a prime example of one which is not equally open to minority voters. *Id.* at 60-61.

iv. *Exclusion of Minorities from Candidate Slating Process*

The *Montes* court found that this Senate Factor was not applicable. *Id.*at 61.

v. *Lingering Effects of Past Discrimination*

The fifth Senate Factor is "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process." *Gingles*, 478 U.S. at 37. Plaintiffs proffered statistics from the 2010-2012 ACS 3-Year Estimates as evidence that Latinos continue to bear the effects of discrimination in Yakima. *Montes* at 61. This evidence demonstrated that Latinos were more likely to live below the poverty line, the median family income for Latinos is less than half the median family income of white families, the rate of home ownership among Latinos is less, a higher percentage of Latinos lack a high school diploma, a higher percentage of Latino adults do not have health insurance and Latinos account for a lower percentage of City employees. *Id.* at 61-62.

The *Montes* court found that this data was probative of whether the electoral process was equally open to participation by Latinos. *Id.*at 62. The court found that "it can be hardly disputed that depressed socio-economic conditions have at least some detrimental effect on

participation in the political process. *Id.* For purposes of the § 2 totality of the circumstances inquiry, a correlation between the two is sufficient. *See Benavidez*, 638 F. Supp. 2d 709, 727 (2009).

vi. ***Use of Subtle or Overt Racial Appeals in Campaigns***

The court found insufficient evidence of this Senate Factor. *Montes* at 63.

vii. ***Extent of Minority Electoral Success***

The seventh Senate Factor looks to "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 37. The court found that it is undisputed that no Latino candidate has ever been elected to the City Council under the current voting system. *Montes* at 63. The court noted that the only Latina ever appointed was defeated by a non-Latino challenger upon running for election. *Id.*

e. ***Extent of Senate Factors***

The court found that on balance the Senate Factors weigh firmly in Plaintiffs' favor. *Id.* at 65. The court held that this supports only one rational conclusion: "that under the totality of the circumstances City Council elections are not "equally open to participation" by Latino voters. 42 U.S.C. § 1973(b) (currently codified at 52 U.S.C. § 10301).

3. ***Remedy for Violation of § 2***

The *Montes* court granted Plaintiffs' relief as requested: (1) an injunction enjoining Defendants from administering, implementing, or conducting any future elections for the City under the current method of electing City Council members and (2) the implementation of an election system for the Yakima City Council that complies with § 2 of the Voting Rights Act.

B. ***Final Injunction and Remedial Districting Plan***

In the remedial phase, the *Montes* court adopted the Plaintiffs' Proposed Remedial Plan ("Plan"). *Montes Final Injunction* at 34. The Plaintiffs' Plan followed a numbered post format. *Id.* at 10. It proposed seven single-member districts and no at-large seats. *Id.* A candidate could only seek election in the district within which he or she resided. *Id.* If more than two candidates filed "for any given single-member district seat, the City would hold a primary and the top two candidates would advance to the general election." *Id.* "Only voters living within the geographic district would be allowed to vote for a particular single-member district candidate in the general election." *Id.* "The candidate who receives a simple majority in the general election would be elected to the council." *Id.*

Plaintiffs' Plan proposed that council members have four-year, staggered terms. *Id.* Plaintiffs proposed that all seven seats stand for election in 2015. *Id.* "The staggered system would be preserved by having even-numbered seats stand for election again in 2017 for full four-year terms; odd-numbered seats would stand for election again in 2019." *Id.*

The court set forth the demographics of the Plan as follows:

District	Total Pop.	Total CVAP	Latino CVAP	Latino share of CVAP
1	12,533	4,998	2,625	52.52%
2	13,358	5,527	2,506	45.34%
3	12,859	8,653	2,181	25.21%
4	13,175	7,676	2,075	27.03%
5	12,683	8,702	1,071	12.31%
6	13,176	9,625	685	7.12%
7	13,283	9,823	1,491	15.81%

Id. at 10-11.

In the absence of a valid legislative plan, the duty falls on the district court to impose a constitutionally acceptable plan that will remedy the Section 2 violation. *Chapman v. Meier*, 420 U.S. 1, 27 (1975). In choosing among possible remedial plans, a court must implement a plan that most closely approximates any proposed legislative plan, while satisfying constitutional requirements and preventing a renewed Section 2 violation. *See White v. Weiser*, 412 U.S. 783, 795-97 (1973). When a district court is required to fashion a remedy, the Supreme Court has directed the use of single-member districts unless there are compelling reasons not to use them. *See Chapman*, 420 U.S. at 18-19 (reaffirming "an emphasis upon single-member districts in court-ordered plans" absent "insurmountable difficulties" or "particularly pressing features calling for [another type of electoral system]").

The *Montes* court found that Plaintiffs' Plan would create seven single-member districts. *Montes Final Injunction* at 27. The court found that District 1 would have a majority-Latino CVAP (52.52%) and District 2 would have "a substantial Latino population, in which Latinos constitute 45.34% of the CVAP. *Id.* The court found that Latinos would constitute a quarter or more of the CVAP in two other districts (3 and 4). *Id.* The court found that Plaintiffs' Plan "affords Latinos the present ability to elect a Latino-preferred candidate in District 1 and a genuine possibility to elect a Latino-preferred candidate in District 2." *Id.* The court held that this provides rough proportionality. *Id.*

The court found that Plaintiffs' Plan "also avoids concentrating the Latino population into a single geographic district which would minimize the ability of Latinos to influence districts in which they are not the majority." *Id.* The court held that Plaintiffs' Plan was lawful and meets

the objectives of remedying the Section 2 violation. *Id.* It held that the boundaries of the single-member districts reflected in Plaintiffs' Plan "are reasonably compact and are not in derogation of traditional redistricting principles." *Id.* The court held that the total population deviation among districts is 6.33%, and therefore the proposed districts comply with the one person, one vote requirement of federal law. *See Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (concluding that an apportionment plan with a maximum population deviation under 10% is only a minor deviation from mathematical equality among voting districts and is a prima facie indication that the districts are acceptable); *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) ("[T]he overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen.")

The *Montes* court emphasized that "districting plans with some members of the minority group outside the minority-controlled districts are valid," and "the fact that the proposed remedy does not benefit all of the Hispanics in the City does not justify denying any remedy at all." *Gomez v. City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988). The *Montes* court held that "in light of the fact that the alternative proposed remedies perpetuate the Section 2 violation, the Court concludes that the use of single-member districts is a valid remedy, even though some Latinos may live outside the majority-Latino districts, because it affords the Latino population an effective remedy, imperfect as it may be." *Montes Final Injunction* at 29.

The court explained that districting that factors in race must not do so "more than is 'reasonably necessary' to avoid § 2 liability." *Bush v. Vera*, 517 U.S. 952, 979 (1996). The *Montes* court held that Plaintiffs' Plan – "which factors in traditional districting concepts, such as compactness and equal protection—does not factor in race more than is necessary." *Montes Final Injunction* at 30. The *Montes* court explained further that in determining how and when

remedial measures should be implemented, the Court must consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. *Reynolds*, 377 U.S. at 585.

The *Montes* court added that "the constitutional infraction is one that goes to the core of the rights of citizens: the ability to equally participate in the political process. Latinos have been denied the equal opportunity to elect representatives of their choice." *Montes Final Injunction* at 31. The *Montes* court explained that this "is balanced against the minor disruptive effect of requiring all city council positions to stand for election in 2015." *Id.* It found that Plaintiffs' Plan "would not call for immediate elections but would hold elections as normally scheduled for 2015." *Id.* at 31-32.

The *Montes* court found that the Plaintiffs' Plan "takes into account the mechanics and complexities of Washington State's election laws." *Id.* at 32. It explained that "unlike the proposed at-large, limited voting system, the use of single-member districts is well-accepted as a valid electoral system in Washington, as is the procedure of modifying staggered councilmember positions at the next scheduled general election cycle." *Id.*; *See* RCW 35.18.020(2)-(4) (affording for initial staggering of terms and, upon changes in the number of council seats, for staggering at the next general election cycle). The *Montes* court noted further that this year's election cycle is not imminent, the City and its residents will have ample time to implement the remedial electoral system. *Montes Final Injunction* at 32.

The *Montes* court concluded that "given the long-standing Section 2 violation, a broad electoral field only serves to assure that each citizen of voting age has the appropriate opportunity, under the new electoral scheme, to have his or her voice heard now." *Id.* at 33. It

held that "this compelling remedial goal outweighs any slight inconvenience to those three candidates that will be displaced after having been elected under a flawed system." *Id.*

The *Montes* court ordered:

> . . . 2. The City of Yakima is permanently enjoined from administering, implementing, or conducting any future elections for the Yakima City Council in which members of the City Council are elected on an at-large basis, whether in a primary, general, or special election.
>
> 3. Beginning with the elections for the Yakima City Council to be held in 2015, and including the August 4, 2015 primary election and the November 3, 2015 general election, all elections for the Yakima City Council will be conducted using a system in which each of the seven members of the City Council is elected from a single-member district. Each councilmember must reside in his or her district, and only residents of a given district may vote for the councilmember position for that district.
>
> 4. The Court hereby adopts, as a remedy for the Section 2 violation, Plaintiffs' proposed Illustrative Plan 1 . . .

Id. at 34.